

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARLOS ROMULO, et al.,

Plaintiffs,

v.

OPTIMA FUNDING, INC., et al.,

Defendants.

No. C 09-3296 PJH

ORDER OF DISMISSAL

The court is in receipt of the declaration filed by American Home's counsel on October 7, 2009, requesting that the court dismiss plaintiffs' complaint against American Home with prejudice. On September 8, 2009, this court dismissed without prejudice plaintiffs' complaint against American Home. Plaintiff was advised to file an amended complaint no later than October 5, 2009 or the case would be dismissed with prejudice. That deadline is now two weeks past, and plaintiff has yet to file an amended complaint.

The court has considered the five factors set forth in Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987), and has determined that notwithstanding the public policy favoring the disposition of actions on their merits, the court's need to manage its docket and the public interest in the expeditious resolution of the instant litigation require dismissal of this action. In view of plaintiffs' lack of response to this court's prior order, the court finds there is no appropriate less drastic sanction.

Accordingly, this action is DISMISSED with prejudice as to American Home, pursuant to Fed. R. Civ. Pro. 41(b), for plaintiffs' failure to prosecute.

IT IS SO ORDERED.

Dated: October 19, 2009



PHYLLIS J. HAMILTON
United States District Judge